

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECOND AMENDMENT ARMS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 10-CV-4257
)	Judge Robert M. Dow, Jr.
CITY OF CHICAGO, et al.,)	Magistrate Judge Sheila M. Finnegan
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS COUNTS I, III, AND VIII-XVIII
OF PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants City of Chicago (the "City"), Mayor Rahm Emanuel, Superintendent of Police Garry McCarthy, and Susana Mendoza (collectively, "Defendants"), by their counsel, Stephen R. Patton, Corporation Counsel of the City of Chicago, hereby move pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to Dismiss Counts I, III, and VIII-XVIII of the Second Amended Complaint ("Complaint") filed by Plaintiffs Second Amendment Arms ("SAA"), R. Joseph Franzese, Robert M. Zieman, Sr., ICarry, and Shaun A. Kranish, and Tony Kole (collectively, "Plaintiffs"). In support of their motion, Defendants state as follows:

1. In their eighteen-count Complaint, Plaintiffs challenge many sections of the City's Responsible Gun Owners' Ordinance, enacted on July 2, 2010. They bring their claims under myriad provisions of the United States Constitution, the Illinois Constitution, and various federal and state laws.

2. Defendants move to dismiss that portion of Count I which challenges the City's Zoning Ordinance, Count III, and Counts VIII-XVIII. Those counts fail to state a claim and should be dismissed under Rule 12(b)(6). Count VIII should also be dismissed pursuant to Rule 12(b)(1)

because Plaintiffs lack standing to bring that claim.

3. Moreover, because there is no basis for Plaintiffs to maintain their claims against Defendants Mayor Emanuel, Superintendent McCarthy, and Mendoza in their official capacities, they should be dismissed as defendants from this action.

4. For these reasons, set forth more fully in Defendants' Memorandum in Support, which Defendants incorporate as if stated fully herein, the portion of Count I challenging the City's Zoning Ordinance, Count III, and Counts VIII through XVIII fail to state a claim and should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6).

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court dismiss that part of Count I challenging the City's Zoning Ordinance, Count III, and Counts VIII through XVIII, and grant Defendants such further relief as this Court deems just and appropriate.

Date: November 4, 2011

Respectfully submitted,

STEPHEN R. PATTON,
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